

subject records in order to learn about potential planting of Genetically Engineered (GE) crops in national wildlife refuges.

3. Plaintiff submitted a FOIA request to the USTR dated April 25, 2011. USTR acknowledged receipt of PEER's FOIA request in a letter dated June 8, 2011. They stated that they had located twenty documents within the scope of the request, but that they would not produce any documents. USTR indicated that the agency was withholding one document pursuant to 5 U.S.C. § 522(b)(5) of the Freedom of Information Act (Exemption 5), and that they had referred sixteen additional documents to the Office of Science and Technology Policy (OSTP) and three documents to the Department of the Interior (DOI) for final disclosure determinations. Plaintiff appealed the Exemption 5 claim and the constructive denial of its FOIA request on June 13, 2011. USTR has not responded to the appeal.
4. USTR's conduct is arbitrary and capricious and amounts to a denial of Plaintiff's FOIA request. USTR's conduct frustrates Plaintiff's efforts to educate the public regarding ongoing activities at the USTR and is a violation of the FOIA.
5. Plaintiff seeks a court order requiring USTR to produce immediately the documents sought in the April 25, 2011 FOIA request, as well as other appropriate relief.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

7. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
8. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2414 and 5 U.S.C. § 552(a)(4)(E).
9. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e), because the Defendant resides in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district. Venue is also proper under 5 U.S.C. § 552(a)(4)(B).

PARTIES

10. Plaintiff PEER is a non-profit public interest organization, with its main office located Washington, D.C., and field offices located in California, Arizona, Colorado, Florida, Massachusetts, New Jersey, and Tennessee.
11. PEER is not a commercial enterprise for purposes of the fee waiver provisions of FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Among other public interest projects, PEER engages in advocacy, research, education, and litigation relating to the promotion of public understanding and debate concerning key current public policy issues, focusing on the environment, public lands and natural resource management, public funding of environmental and natural resource agencies, and ethics in government.
12. Informing the public about these important public policy issues is central to PEER's mission. PEER educates and informs the public through news releases to the media, PEER's web site www.peer.org, which draws between 1,000 and 10,000 viewers per day,

and PEER's newsletter which has a circulation of approximately 20,000, including 1,500 environmental journalists.

13. Defendant USTR is an agency of the United States as defined by 5 U.S.C. § 552(f)(1), and is charged with the duty to provide public access to documents in its possession consistent with the requirements of the FOIA and is denying Plaintiff access to its records in contravention of federal law.

FACTS

14. On April 25, 2011, PEER filed a FOIA request seeking agency records. The USTR number assigned to the request is Case File # 11042618.
15. Plaintiff's FOIA Request sought the following information from the USTR on the topic of the cultivation of genetically modified or genetically engineered crops (hereafter "GE") on national wildlife refuges: (1) all communications to and from outside (non-federal) entities, including corporations, or individuals concerning cultivation of GE crops on national wildlife refuges, and (2) all communications to and from other federal agencies, including the US Fish and Wildlife Service and the Department of Interior, concerning cultivation of GE crops on national wildlife refuges.
16. USTR acknowledged receipt of Plaintiff's FOIA request in a letter dated June 8, 2011, outside of the twenty day limit imposed by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i).
17. Within that same communication, USTR stated that they had located twenty documents within the scope of the request, but that they would not produce any documents. USTR indicated that the agency withheld one document pursuant to 5 U.S.C. § 522(b)(5) of the Freedom of Information Act (Exemption 5), and that they had referred sixteen documents

to the Office of Science and Technology Policy (OSTP) and three documents to the Department of the Interior (DOI) for final disclosure determinations.

18. By letter dated June 13, 2011, Plaintiff filed an administrative appeal of USTR's response to its FOIA request, citing USTR's failure to provide any justification for withholding documents under Exemption 5, and USTR's constructive denial of the request by referring documents to other agencies.
19. USTR did not respond to Plaintiff's June 13, 2011 appeal, nor did it provide the requested documents. In so doing, USTR failed to meet the twenty (20) day limit imposed by FOIA for responding to an appeal. *See* 5 U.S.C. § 552(a)(6)(A)(ii).
20. The DOI sent Plaintiff a letter on June 30, 2011, saying that they had received USTR's referral, and that they had located the three documents which the USTR has referred to them. The DOI released those three documents to Plaintiff in full. The OSTP has not acknowledged the referral or done anything to provide Plaintiff with the sixteen referred documents. Plaintiff has not heard anything further from the USTR or the OSTP regarding the documents referred to the OSTP.
21. Plaintiff has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C) for its FOIA request, and now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.

CAUSES OF ACTION

Count I: Violation of the Freedom of Information Act

22. Plaintiff repeats the allegations in paragraphs 1 through 21.

23. USTR's failure to disclose the requested documents is a violation of FOIA, 5 U.S.C. § 552, and the agency's own regulations promulgated thereunder. 15 C.F.R. §§ 2004.1-2004.11 (2011).

Count II: Violation of the Administrative Procedure Act

24. Plaintiff repeats the allegations in paragraphs 1 through 21.
25. USTR's failure to disclose documents responsive to Plaintiff's request constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706. USTR's failure in this matter is arbitrary, capricious, an abuse of discretion, not in accordance with the law and without observance of procedure required by law, all in violation of the APA.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests and prays that this Court:

- i. Enter an Order declaring that USTR has wrongfully withheld the requested agency records;
- ii. Issue a permanent injunction directing USTR to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until USTR is in compliance with FOIA, APA and every order of this Court;
- iv. Enter an Order declaring that Plaintiff is entitled to a full fee waiver under 5 U.S.C. § 552 (a)(4)(A)(iii) for both of Plaintiff's FOIA requests to the extent that USTR does not provide a full fee waiver for both of Plaintiff's requests;

- v. Award Plaintiff its attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- vi. Grant such additional and further relief to which Plaintiff may be entitled.

Dated: July 21, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kathryn Douglass', written over a horizontal line.

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